

CIVIL COVER SHEET

JS-44 (Rev 3/99)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1997, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS

Scott Stalets

DEFENDANTS

Portex, Inc. d/b/a SIMS Portex, Inc.
SIMS Portex, Inc. d/b/a Portex, Inc.
Smiths Group, PLC d/b/a Smiths Medical, d/b/a Portex, Inc.
d/b/a SIMS Portex, Inc.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

(b) County of Residence of First Listed Plaintiff Tarrant
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Dale M. Rodriguez
PO Box 260926
Plano, Texas 75026
(972) 769-1477

Attorneys (If Known)

3 0 2 C V - 2 0 8 5 R

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify) _____
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Statute Title VII of Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq Cause of action unlawful employment retaliation

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FILED

SEP 26 2002

CLERK, U.S. DISTRICT COURT

By Deputy

CIVIL ACTION NO.

3 0 2 C V - 2 0 8 5 R

SCOTT STALETS,

Plaintiff,

vs.

PORTEX, INC. d/b/a SIMS PORTEX, INC.,
SIMS PORTEX, INC. d/b/a PORTEX, INC , and
SMITHS GROUP, PLC d/b/a SMITHS MEDICAL
d/b/a SIMS PORTEX, INC.
d/b/a PORTEX, INC.

Defendants.

PLAINTIFF'S ORIGINAL COMPLAINT

Scott Stalets ("Stalets"), Plaintiff, files this his Original Complaint against Portex, Inc d/b/a SIMS Portex, Inc , SIMS Portex, Inc. d/b/a Portex, Inc., and Smiths Group, PLC d/b/a Smiths Medical d/b/a SIMS Portex, Inc d/b/a Portex, Inc. (collectively hereinafter "SIMS" or "Defendants"), Defendants, to redress certain grievances arising under Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e *et seq.* For causes of action, Plaintiff would show the Court as follows:

I.

JURISDICTION, PARTIES AND VENUE

1 This Court has jurisdiction to hear the merits of Plaintiff's claims under 28 U.S.C. §§ 1331, 1343(a)(4), 1367 and 1391. Defendants are corporations doing business in this judicial district. Stalets is an individual residing in Southlake, Tarrant County, Texas. Unless otherwise noted, all events described hereinafter occurred in Tarrant County, Texas. Venue is therefore proper.

II.

FACTUAL BACKGROUND

2. Stalets was employed by Portex, Inc. d/b/a SIMS Portex, Inc. from around or about December 6, 1999 until on or about May 7, 2001.

3. Stalets was employed by SIMS Portex, Inc d/b/a Portex, Inc. from around or about December 6, 1999 until on or about May 7, 2001.

4. Stalets was employed by Smiths Group, PLC d/b/a Smiths Medical, d/b/a SIMS Portex, Inc , d/b/a Portex, Inc. from around or about December 6, 1999 until on or about May 7, 2001

5. Stalets' position at the time of the events in question was Southwest Sales Manager. While employed with SIMS, Stalets worked out of his home in Southlake, Texas

6. Stalets was a model employee throughout his employment with SIMS. Indeed, around or about August 2000, Stalets was offered a promotion to National Sales Manager, which he declined

7. After a little over a year on the job, around or about December 29, 2000, Stalets' supervisor, Richard Eagle ("Eagle"), gave Stalets a 5% salary increase, telling Stalets that the increase reflected his "good performance with regard to gross profit," and that he was doing a "good job," and that he had "one year down, many more to come," and encouraged him to "keep up the good work "

8. However, on March 2, 2001, Jim Searle, SIMS' new National Sales Manager met Stalets at DF/W Airport and told Stalets that he was sent by Eagle to obtain Stalets' signature on a document described as a "Resignation Agreement." When Stalets asked why, Searle told him that he did not know why and would try to find out the reason. Stalets refused to sign the document, Searle departed, and Stalets never heard from him again as Searle was terminated by SIMS a few days later

9. Only a few days later, on March 7, 2001, Eagle placed Stalets on a unique performance

improvement plan (“PIP”) that was not consistent with company policy or practice and which imposed unreasonable and unreachable goals in an unrealistically short time frame. Stalets was told that if he did not sign the PIP, his employment would immediately be terminated. Not wanting to lose his job, Stalets had no reasonable alternative but to sign the PIP, even though he did not agree with it.

10 The PIP that Eagle imposed cites Stalets’ alleged failure to achieve gross profit goals as well as vague criticisms of Stalets’ management style. However, Stalets’ region’s gross profit numbers were no worse than that of other regions (ranking 3rd or 4th out of 10 regions), and yet he was singled out to be put on the PIP when worse performing sales managers in other regions were not. Additionally, Eagle never explained to Stalets the underlying basis for the criticisms of Stalets’ management style noted in the PIP.

11. The forgoing facts indicate that something happened between December 29, 2000 and March 3, 2001 that drastically altered Eagle’s perception of Mr. Stalets. Indeed, something did happen. Specifically, Stalets had received complaints from one of his employees named Karen Rossi (“Rossi”) that Eagle had been intimidating her and subjecting her and other female employees to apparent sexual harassment and/or gender discrimination/intimidation. Rossi provided details of several incidents that appeared to substantiate her allegations, including one in which Eagle apparently dropped his pants in front of a female employee. Stalets had also heard complaints from other female employees over the course of his employment with SIMS who complained about how uncomfortable Eagle made them. Given this information and background, Stalets reasonably believed that Rossi (and other female employees) was complaining to him of unlawful sexual harassment and/or gender discrimination/intimidation. As Rossi’s manager, and based on his understanding of company policy,

Stalets reasonably believed that he had a duty to bring Rossi's complaints to Eagle's attention

12. As a result, Stalets told Eagle of Rossi's allegations in February, 2001, and, importantly, further told Eagle that if he was doing these things, he needed to stop. Conspicuously, Eagle did not deny Rossi's allegations. Instead, he replied by telling Stalets that if Rossi's sales numbers dropped, she would "show up on the radar screen," which Stalets understood meant that she would be terminated. Concerned about the implications of this statement, Stalets dropped the matter.

13. Just a few weeks later, on March 7, 2001, Eagle put Stalets on the unwarranted and punitive PIP. Then, on May 7, 2001, despite Stalets' initiation of the company's complaint resolution process, SIMS terminated Stalets' employment.

14. In short, Stalets was retaliated against by SIMS (via the actions of Eagle) because he made statements to Eagle opposing what he reasonably understood to be unlawful sexual harassment and/or gender discrimination/intimidation against female employees as perpetrated by Eagle. The reasons articulated by SIMS for its actions towards Stalets are pretexts for unlawful retaliation.

15. Stalets has complied with and has satisfied all jurisdictional prerequisites in connection with each of his claims in this lawsuit and has filed this lawsuit within ninety (90) days of his receipt of a Notice of Right to Sue letter.

III.

CAUSES OF ACTION

16. Plaintiff fully incorporates each and every fact set forth in paragraphs 1 through 15, *supra*, with respect to each and every cause of action set forth below.

COUNT ONE – UNLAWFUL RETALIATION

17. SIMS' actions as described above constitute unlawful retaliation in violation of Title VII of

the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-(3)(a).

18 As a result of SIMS' actions as described above in violating Title VII, Stalets has incurred actual damages in the form of lost wages, lost/replacement benefits, and interest thereon

19 As a further result of SIMS' actions as described above in violating Title VII, Stalets has suffered emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses. Accordingly, Stalets is entitled to compensatory damages in the maximum amount permitted by law.

20 As a further result of SIMS' actions as described above in violating Title VII with malice or reckless indifference to the federally protected rights of Stalets, he is entitled to punitive damages in the maximum amount permitted by law.

21 Additionally, Stalets is entitled to recover his attorneys' fees and costs of Court

PRAYER

WHEREFORE, Plaintiff, Scott Stalets, respectfully prays that this Court advance this case on the docket, order a speedy trial at the earliest practicable date, cause the action to be in every way expedited, and, upon final hearing, Stalets have:

1. Judgment against SIMS for Stalets' actual damages, including, but not limited to, lost wages and lost/replacement benefits;
2. Judgment against SIMS for compensatory damages;
3. Judgment against SIMS for punitive damages;
4. Judgment against SIMS ordering it to take such other reasonable actions as may be necessary to remedy the effects of SIMS' violation of Title VII;
5. Pre-judgment interest at the appropriate legal rate on all amounts awarded,

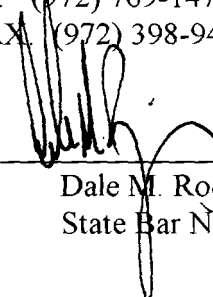
- 6 Interest after judgment at the rate of 10% per annum until paid,
- 7 Judgment against SIMS for Stalets' reasonable attorneys' fees,
8. Costs of suit; and
- 9 Such other and further relief to which Stalets may be justly entitled

Dated September 26, 2002

Respectfully submitted,

LAW OFFICE OF DALE M. RODRIGUEZ
P.O. BOX 260926
PLANO, TEXAS 75026-0926
Ph. (972) 769-1477
FAX (972) 398-9479

By



Dale M. Rodriguez
State Bar No. 00788302

ATTORNEY FOR PLAINTIFF